

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NICHOLAS RANDOLPH KELLAM, )  
Petitioner, )  
v. ) 1:12CV932  
UNITED STATES OF AMERICA, )  
Respondent. )

## ORDER

On July 23, 2013, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. Petitioner and Respondent have stipulated that no objections to the Recommendation will be filed (see Notice [Doc. #55] and July 25, 2013 docket entry). Therefore, the Court need not make a *de novo* review and the Magistrate Judge's Recommendation [Doc. #53] is hereby adopted.

IT IS THEREFORE ORDERED that Petitioner's Motion to Vacate, Set Aside or Correct Sentence [Doc.#38] is GRANTED, and the sentence set out in the Judgment [Doc. #20] is VACATED. The Clerk is directed to set this matter for resentencing. Petitioner remains in custody, and the United States Attorney is directed to produce Petitioner for the resentencing hearing. The Probation Office is directed to prepare a Supplement to the Presentence Investigation Report in advance of the hearing. Counsel will be appointed to represent Petitioner at the resentencing hearing.

This, the 6<sup>th</sup> day of August, 2013.

*James A. Beasy*  
United States District Judge